

AMENDED IN ASSEMBLY JANUARY 18, 2002

AMENDED IN ASSEMBLY JANUARY 7, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 1458

Introduced by Assembly Member Kelley

February 23, 2001

An act to add Sections 7093.6, 9278, 50156.18, and 55046.5 to the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1458, as amended, Kelley. State Board of Equalization: business and special taxes.

Existing law provides for the administration of various taxes by the State Board of Equalization.

This bill would authorize the board to accept offers in compromise on a final tax liability, as defined, under the Sales and Use Tax Law and the Use Fuel Tax Law, and on a final fee liability, as defined, under the Underground Storage Tank Maintenance Fee Law, as applicable.

The Fee Collection Procedures Law provides for the administration of various fee programs by the board.

This bill would authorize the board to allow for the relief of interest for failure to make a timely return or payment due to a disaster, as provided.

By creating new crimes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7093.6 is added to the Revenue and
2 Taxation Code, to read:
3 7093.6. (a) (1) Beginning January 1, 2003, the executive
4 director and chief counsel of the board, or their delegates, may
5 compromise any final tax liability in which the reduction of tax is
6 seven thousand five hundred dollars (\$7,500) or less.
7 (2) Except as provided in paragraph (3), the board, upon
8 recommendation by its executive director and chief counsel,
9 jointly, may compromise a final tax liability involving a reduction
10 in tax in excess of seven thousand five hundred dollars (\$7,500).
11 Any recommendation for approval of an offer in compromise that
12 is not either approved or disapproved within 45 days of the
13 submission of the recommendation shall be deemed approved.
14 (3) The board, itself, may by resolution delegate to the
15 executive director and the chief counsel, jointly, the authority to
16 compromise a final tax liability in which the reduction of tax is in
17 excess of seven thousand five hundred dollars (\$7,500), but less
18 than ~~twenty-five thousand dollars (\$25,000)~~ *ten thousand dollars*
19 *(\$10,000)*.
20 (b) For purposes of this section, “a final tax liability” means
21 any final tax liability arising under Part 1 (commencing with
22 Section 6001), Part 1.5 (commencing with Section 7200), Part 1.6
23 (commencing with Section 7251), and Part 1.7 (commencing with
24 Section 7280) or related interest, additions to tax, penalties, or
25 other amounts assessed under this part.
26 (c) Offers in compromise shall be considered only for liabilities
27 that were generated from a business that has been discontinued or
28 transferred, where the taxpayer making the offer no longer has a
29 controlling interest or association with the transferred business or
30 has a controlling interest or association with a similar type of
31 business as the transferred or discontinued business.



(d) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(e) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(f) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(g) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, the acceptance of an offer in compromise from one liable taxpayer shall not relieve the other taxpayers from paying the entire liability. However, the amount of the liability shall be reduced by the amount of the accepted offer.

(h) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for a least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

1 The public record shall not include any information that relates
2 to any trade secrets, patent, process, style of work, apparatus,
3 business secret, or organizational structure, that if disclosed,
4 would adversely affect the taxpayer or violate the confidentiality
5 provisions of Section 7056. No list shall be prepared and no
6 releases distributed by the board in connection with these
7 statements.

8 (i) Any compromise made under this section may be rescinded,
9 all compromised liabilities may be reestablished (without regard
10 to any statute of limitations that otherwise may be applicable), and
11 no portion of the amount offered in compromise refunded, if either
12 of the following occurs:

13 (1) The board determines that any person did any of the
14 following acts regarding the making of the offer:

15 (A) Concealed from the board any property belonging to the
16 estate of any taxpayer or other person liable for the tax.

17 (B) Received, withheld, destroyed, mutilated, or falsified any
18 book, document, or record or made any false statement, relating
19 to the estate or financial condition of the taxpayer or other person
20 liable for the tax.

21 (2) The taxpayer fails to comply with any of the terms and
22 conditions relative to the offer.

23 (j) Any person who, in connection with any offer or
24 compromise under this section, or offer of that compromise to
25 enter into that agreement, willfully does either of the following
26 shall be guilty of a felony and, upon conviction, shall be fined not
27 more than fifty thousand dollars (\$50,000) or imprisoned not more
28 than three years, or both, together with the costs of investigation
29 and prosecution:

30 (1) Conceals from any officer or employee of this state any
31 property belonging to the estate of a taxpayer or other person liable
32 in respect of the tax.

33 (2) Receives, withholds, destroys, mutilates, or falsifies any
34 book, document, or record, or makes any false statement, relating
35 to the estate or financial condition of the taxpayer or other person
36 liable in respect of the tax.

37 (k) For purposes of this section, “person” means the taxpayer,
38 any member of the taxpayer’s family, any corporation, agent,
39 fiduciary, or representative of, or any other individual or entity
40 acting on behalf of, the taxpayer, or any other corporation or entity

1 owned or controlled by the taxpayer, directly or indirectly, or that
2 owns or controls the taxpayer, directly or indirectly.

3 SEC. 2. Section 9278 is added to the Revenue and Taxation
4 Code, to read:

5 9278. (a) (1) Beginning January 1, 2003, the executive
6 director and chief counsel of the board, or their delegates, may
7 compromise any final tax liability in which the reduction of tax is
8 seven thousand five hundred dollars (\$7,500) or less.

9 (2) Except as provided in paragraph (3), the board, upon
10 recommendation by its executive director and chief counsel,
11 jointly, may compromise a final tax liability involving a reduction
12 in tax in excess of seven thousand five hundred dollars (\$7,500).
13 Any recommendation for approval of an offer in compromise that
14 is not either approved or disapproved within 45 days of the
15 submission of the recommendation shall be deemed approved.

16 (3) The board, itself, may by resolution delegate to the
17 executive director and the chief counsel, jointly, the authority to
18 compromise a final tax liability in which the reduction of tax is in
19 excess of seven thousand five hundred dollars (\$7,500), but less
20 than ~~twenty-five thousand dollars (\$25,000)~~ *ten thousand dollars*
21 *(\$10,000)*.

22 (b) For purposes of this section, “a final tax liability” means
23 any final tax liability arising under Part 3 (commencing with
24 Section 8601), or related interest, additions to tax, penalties, or
25 other amounts assessed under this part.

26 (c) Offers in compromise shall be considered only for liabilities
27 that were generated from a business that has been discontinued or
28 transferred, where the taxpayer making the offer no longer has a
29 controlling interest or association with the transferred business or
30 has a controlling interest or association with a similar type of
31 business as the transferred or discontinued business.

32 (d) For amounts to be compromised under this section, the
33 following conditions shall exist:

34 (1) The taxpayer shall establish that:

35 (A) The amount offered in payment is the most that can be
36 expected to be paid or collected from the taxpayer’s present assets
37 or income.

38 (B) The taxpayer does not have reasonable prospects of
39 acquiring increased income or assets that would enable the

1 taxpayer to satisfy a greater amount of the liability than the amount
2 offered, within a reasonable period of time.

3 (2) The board shall have determined that acceptance of the
4 compromise is in the best interest of the state.

5 (e) A determination by the board that it would not be in the best
6 interest of the state to accept an offer in compromise in satisfaction
7 of a final tax liability shall not be subject to administrative appeal
8 or judicial review.

9 (f) When an offer in compromise is either accepted or rejected,
10 or the terms and conditions of a compromise agreement are
11 fulfilled, the board shall notify the taxpayer in writing. In the event
12 an offer is rejected, the amount posted will either be applied to the
13 liability or refunded, at the discretion of the taxpayer.

14 (g) When more than one taxpayer is liable for the debt, such as
15 with spouses or partnerships or other business combinations, the
16 acceptance of an offer in compromise from one liable taxpayer
17 shall not relieve the other taxpayers from paying the entire
18 liability. However, the amount of the liability shall be reduced by
19 the amount of the accepted offer.

20 (h) Whenever a compromise of tax or penalties or total tax and
21 penalties in excess of five hundred dollars (\$500) is approved,
22 there shall be placed on file for a least one year in the office of the
23 executive director of the board a public record with respect to that
24 compromise. The public record shall include all of the following
25 information:

26 (1) The name of the taxpayer.

27 (2) The amount of unpaid tax and related penalties, additions
28 to tax, interest, or other amounts involved.

29 (3) The amount offered.

30 (4) A summary of the reason why the compromise is in the best
31 interest of the state.

32 The public record shall not include any information that relates
33 to any trade secrets, patent, process, style of work, apparatus,
34 business secret, or organizational structure, that if disclosed,
35 would adversely affect the taxpayer or violate the confidentiality
36 provisions of Section 9255. No list shall be prepared and no
37 releases distributed by the board in connection with these
38 statements.

39 (i) Any compromise made under this section may be rescinded,
40 all compromised liabilities may be reestablished (without regard

1 to any statute of limitations that otherwise may be applicable), and
2 no portion of the amount offered in compromise refunded, if either
3 of the following occurs:

4 (1) The board determines that any person did any of the
5 following acts regarding the making of the offer:

6 (A) Concealed from the board any property belonging to the
7 estate of any taxpayer or other person liable for the tax.

8 (B) Received, withheld, destroyed, mutilated, or falsified any
9 book, document, or record or made any false statement, relating
10 to the estate or financial condition of the taxpayer or other person
11 liable for the tax.

12 (2) The taxpayer fails to comply with any of the terms and
13 conditions relative to the offer.

14 (j) Any person who, in connection with any offer or
15 compromise under this section, or offer of that compromise to
16 enter into that agreement, willfully does either of the following
17 shall be guilty of a felony and, upon conviction, shall be fined not
18 more than fifty thousand dollars (\$50,000) or imprisoned not more
19 than three years, or both, together with the costs of investigation
20 and prosecution:

21 (1) Conceals from any officer or employee of this state any
22 property belonging to the estate of a taxpayer or other person liable
23 in respect of the tax.

24 (2) Receives, withholds, destroys, mutilates, or falsifies any
25 book, document, or record, or makes any false statement, relating
26 to the estate or financial condition of the taxpayer or other person
27 liable in respect of the tax.

28 (k) For purposes of this section, “person” means the taxpayer,
29 any member of the taxpayer’s family, any corporation, agent,
30 fiduciary, or representative of, or any other individual or entity
31 acting on behalf of, the taxpayer, or any other corporation or entity
32 owned or controlled by the taxpayer, directly or indirectly, or that
33 owns or controls the taxpayer, directly or indirectly.

34 SEC. 3. Section 50156.18 is added to the Revenue and
35 Taxation Code, to read:

36 50156.18. (a) (1) Beginning January 1, 2003, the executive
37 director and chief counsel of the board, or their delegates, may
38 compromise any final fee liability in which the reduction of the fee
39 is seven thousand five hundred dollars (\$7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final fee liability involving a reduction in the fee in excess of seven thousand five hundred dollars (\$7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final fee liability in which the reduction of the fee is in excess of seven thousand five hundred dollars (\$7,500), but less than ~~twenty-five thousand dollars (\$25,000)~~ *ten thousand dollars (\$10,000)*.

(b) For purposes of this section, “a final fee liability” means any final fee liability arising under Part 26 (commencing with Section 50101), or related interest, additions to the fee, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the feepayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) For amounts to be compromised under this section, the following conditions shall exist:

(1) The feepayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the feepayer’s present assets or income.

(B) The feepayer does not have reasonable prospects of acquiring increased income or assets that would enable the feepayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(e) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final fee liability shall not be subject to administrative appeal or judicial review.

1 (f) When an offer in compromise is either accepted or rejected,
2 or the terms and conditions of a compromise agreement are
3 fulfilled, the board shall notify the feepayer in writing. In the event
4 an offer is rejected, the amount posted will either be applied to the
5 liability or refunded, at the discretion of the feepayer.

6 (g) When more than one feepayer is liable for the debt, such as
7 with spouses or partnerships or other business combinations, the
8 acceptance of an offer in compromise from one liable feepayer
9 shall not relieve the other feepayers from paying the entire
10 liability. However, the amount of the liability shall be reduced by
11 the amount of the accepted offer.

12 (h) Whenever a compromise of the fee or penalties or total fees
13 and penalties in excess of five hundred dollars (\$500) is approved,
14 there shall be placed on file for a least one year in the office of the
15 executive director of the board a public record with respect to that
16 compromise. The public record shall include all of the following
17 information:

18 (1) The name of the feepayer.

19 (2) The amount of unpaid fees and related penalties, additions
20 to fees, interest, or other amounts involved.

21 (3) The amount offered.

22 (4) A summary of the reason why the compromise is in the best
23 interest of the state.

24 The public record shall not include any information that relates
25 to any trade secrets, patent, process, style of work, apparatus,
26 business secret, or organizational structure, that if disclosed,
27 would adversely affect the feepayer or violate the confidentiality
28 provisions of Chapter 8 of Article 2 (commencing with Section
29 50156). No list shall be prepared and no releases distributed by the
30 board in connection with these statements.

31 (i) Any compromise made under this section may be rescinded,
32 all compromised liabilities may be reestablished (without regard
33 to any statute of limitations that otherwise may be applicable), and
34 no portion of the amount offered in compromise refunded, if either
35 of the following occurs:

36 (1) The board determines that any person did any of the
37 following acts regarding the making of the offer:

38 (A) Concealed from the board any property belonging to the
39 estate of any feepayer or other person liable for the fee.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the feepayer or other person liable for the fee.

(2) The feepayer fails to comply with any of the terms and conditions relative to the offer.

(j) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned not more than three years, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a feepayer or other person liable in respect of the fee.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the feepayer or other person liable in respect of the fee.

(k) For purposes of this section, “person” means the feepayer, any member of the feepayer’s family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the feepayer, or any other corporation or entity owned or controlled by the feepayer, directly or indirectly, or that owns or controls the feepayer, directly or indirectly.

SEC. 4. Section 55046.5 is added to the Revenue and Taxation Code, to read:

55046.5. If the board finds that a person’s failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of interest provided by Sections 55041, 55042, 55050, and 55061.

Any person seeking to be relieved of the interest shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

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